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T.D. 89-48

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decision

(T.D. 89-48)

CUSTOMS BOND CANCELLATION STANDARDS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General rule.

SUMMARY: Under the Omnibus Trade and Competitiveness Act of 1988 the Secretary of the Treasury is required to publish guidelines for cancellation of bond charges. This document publishes the Guidelines for Cancellation of Claims for Liquidated Damages currently in effect.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202) 566-8317.

SUPPLEMENTAL INFORMATION:

BACKGROUND

Section 1904 of the Omnibus Trade and Competitiveness Act of 1988 (Pub.L. 100-418), amends section 623 of the Tariff Act of 1930 (19 U.S.C. 1623) by adding at the end of section 623(c) of the Tariff Act of 1930 (19 U.S.C. 1623(c)) the following sentence:

"In order to assure uniform, reasonable, and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder."

The text of the guidelines currently in effect for cancellation of claims for liquidated damages is set forth below.

Dated: April 14, 1989.

HARVEY B. FOX
Director,
Office of Regulations and Rulings.

I. GUIDELINES FOR CANCELLATION OF CLAIMS FOR LIQUIDATED DAMAGES FOR LATE FILING OF ENTRY SUMMARY CLAIMS (19 CFR 142.15)

Pursuant to section 172.22(d) of the Customs Regulations, claims for liquidated damages for failure to file entry summaries timely shall be issued and mitigated as follows:

A. Modified CF 5955A. Notices of liquidated damages incurred shall be issued on a modified CF-5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand:

1. *Option 1.* He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

2. *Option 2.* The second option is to file a petition seeking presumably more relief than would be had by paying the mitigation amount specified:

a. When the entry summary is late by less than 30 days, the district or area director shall grant further relief *only* when the petitioner has demonstrated:

i. The violation did not occur; or

ii. The violation occurred solely as a result of Customs error. (Customs cannot be contributorily negligent in late file cases.)

b. When the entry summary is late by 30 days or more, the district or area director may consider the following factors in response to a petition for further relief:

i. The circumstances causing the delay;

ii. The extent of the lateness;

iii. The amount of duty involved (the higher the amount of withheld duty the greater the advantage to the violator, and as a corollary, the longer it is withheld the greater still the advantage);

iv. The past record of the importer or broker in filing entry summaries timely;

v. The lack of intent to file the entry summary timely;

vi. Ordinarily, mitigation granted under Option 2 shall not be in an amount less than that determined in accordance with Option 1 unless extraordinary mitigating factors are presented.

B. Calculation of mitigated amount. The amounts to be set forth under Option 1 on the CF 5955A shall be calculated as follows:

1. Dutiable entry summary filed late.

The importer of record shall be charged an administrative fee of \$100 plus interest on the withheld duty at the rate of .1 percent (.001) per calendar day that the entry summary was late. The interest amount shall be rounded *up* to the next dollar. For purposes of this calculation, the duty amount shall be rounded *down* to the next dollar.

2. Duty free entry filed late—\$100.
 3. Dutiable entry rejected and refiled late with no withhold duty—\$100.
 4. Dutiable entry filed timely but rejected, refiled late with additional duty owed reflecting duty withheld—\$100 plus interest calculated on withheld duty only.
- C. Date-stamping or receipt system. Entries will be time-stamped in accordance with instructions issued in Customs Directive 3550-24, dated September 8, 1987.

D. Entry summary not filed. If at the time the demand for liquidated damages is issued the entry summary has not been filed, no mitigated amount shall be offered under Option 1. A prerequisite for any mitigation under these guidelines is that the principal file the entry summary and deposit the duty or that the surety deposit the duty. No demand will be mitigated until the summary is filed and/or the duty deposited as stated above. Failure to present the duty check will be treated as a non-filing.

Once the duties have been paid, or, if a non-file has been outstanding for 30 days, a late filing notice will be issued. The late filing claim issued as a result of a non-filing situation shall be cancelled in accordance with the following (however, in no case shall a late filing claim be cancelled before the summary is filed and/or duties deposited in settlement of the non-file):

1. Dutiable entry:
 - a. The importer of record shall be charged an administrative fee of \$200 plus interest on the withheld duty at the rate of .1 percent (.001) per calendar day that the entry summary was late. The interest amount shall be rounded *up* to the next dollar. For purposes of this calculation, the duty amount shall be rounded *down* to the next dollar.
 - b. If an amount equal to the withheld duties was paid by the surety, the surety shall be charged an administrative fee of \$200 plus .1 percent (.001) per calendar day between the date of the demand for duties made against surety and the date of payment of those duties.

2. Non-dutiable entry—\$200.

3. Note: If a non-filing claim is issued and duties are not paid within 30 days, a late filing claim should be issued without an Option 1 amount. Only petitions will be reviewed and the claims will be cancelled in a manner consistent with these guidelines (payment of duties plus \$200 plus the appropriate interest charge).

E. Second offenses. These guidelines provide for charging an administrative fee plus interest for each late filing case. Accordingly, the fact that a violation is a second or subsequent offense is important only to determine an importer's record within the context of A(2)(b)(vi) above. If an importer frequently abuses his privileges and fails to meet his obligations under immediate release procedures, steps should be taken in accordance with the Regulations and existing policy directives to suspend those privileges. In the alterna-

tive, the District Director may choose to assess liquidated damages but not offer an Option 1 alternative. In these cases, consultation with Headquarters, Penalties Branch, shall occur to determine appropriate mitigation.

II. GUIDELINES FOR CANCELLATION OF CLAIMS FOR LIQUIDATED DAMAGES FOR VIOLATION OF TEMPORARY INFORMATION BONDS (19 CFR 10.39)

A. Cancel without payment if:

1. Breach was for the benefit of the United States.

2. Breach was due wholly to circumstances beyond the importer's control and which could not have been reasonably anticipated, i.e., destruction by fire.

3. Merchandise would have been entitled to free entry as domestic products exported and returned.

B. If the merchandise was exported or destroyed, but not within the bond period, or if it was exported but not under Customs supervision (if required), or if it was timely exported or destroyed but Customs was not timely notified so as to cancel the bond:

1. Cancel the claim for liquidated damages upon payment of an amount between 1 and 5 percent of the bond amount (depending on aggravating or mitigating factors present), but not less than \$100.

2. Examples of aggravating factors:

a. Importer is uncooperative, e.g., fails to provide information to Customs.

b. A large number of violations of this type by the importer in relation to the total number of transactions engaged in.

c. Experience in importing.

d. Importer's willful disregard or carelessness toward responsibilities under applicable statutes, regulations, or bond.

3. Examples of mitigating factors:

a. Contributory Customs error, e.g., importer demonstrates that he acted in accordance with instructions given by Customs personnel.

b. Importer cooperates with Customs personnel in resolution of the case.

c. Importer takes immediate remedial action.

d. Lack of experience in importing.

e. A small number of violations of this type in relation to the number of transactions engaged in.

C. Grant no relief from the claim for liquidated damages in the following cases:

1. When the merchandise has entered into the commerce of the United States. If petitioner claims the articles have been exported or destroyed and does not present satisfactory evidence thereof, articles shall be deemed to have entered the commerce.

2. When the importer requests that a TIB entry be amended to a consumption entry after the merchandise has been released from Customs custody.

3. When TIB merchandise is sold and not exported.
- D. Grant relief equal to one times the duty on merchandise which is sold but later exported.

III. GUIDELINES FOR CANCELLATION OF CLAIMS FOR SHORTAGE, IRREGULAR DELIVERY, NON-DELIVERY OR DELIVERY DIRECTLY TO THE CONSIGNEE OF IN-BOND MERCHANDISE (19 CFR 18.8)

- A. Documents filed late or merchandise delivered late:
 1. If merchandise is delivered timely to the port of destination or exportation (not within 15 days if transported by air, 30 days if transported by vehicle, or 60 days if transported by vessel) but is otherwise intact, cancel the claim upon payment of an amount between \$100 and \$500 depending on the presence of aggravating or mitigating factors.
 2. If merchandise is delivered timely but the documentation is not filed with Customs within 2 days of arrival in the port of delivery, cancel the claim upon payment of an amount between \$100 and \$500 depending on the presence of aggravating and mitigating factors.
 3. If the bonded carrier consistently fails to timely deliver paperwork and Customs business is impeded by these repeated failures, the district director may cancel any claim upon payment of a higher amount than the guidelines generally permit. The advice of Headquarters, Office of Regulations and Rulings, Penalties Branch, shall be sought to determine appropriate mitigation.
- B. Failure to deliver or shortage—Customs records indicate that merchandise was not delivered, or was delivered short:
 1. If the carrier shows that the merchandise was entered and duty was paid (on an IT) or that the merchandise was exported but not in accordance with regulation (on a T&E or Direct Export), the claim may be cancelled upon payment of amount between \$100 and \$1,000 depending on the presence of aggravating and mitigating factors.
 2. If the bonded carrier can prove that the merchandise was never received or landed, the claim should be cancelled without payment.
 3. If the carrier cannot prove that the merchandise was entered and duty paid or that it was properly exported or that it was never received or landed, the claim should be cancelled upon payment of an amount equal to the duties that would have been due on the subject merchandise had it been properly entered plus an amount between \$100 and \$1,000.
 4. If the merchandise which has not been delivered is free of duty, cancel the claim upon payment of an amount between \$100 and \$1,000 depending on the presence of aggravating and mitigating factors.

5. If the bonded carrier consistently has shortages and failure to deliver cases and Customs business is impeded by these repeated failures, the district director may cancel any claim upon payment of a higher amount than the guidelines generally permit. The advice of Headquarters, Office of Regulations and Rulings, Penalties Branch, shall be sought to determine appropriate mitigation.

C. Delivery of merchandise directly to the consignee:

1. If the carrier can show that the merchandise was entered and duty paid, the claim may be cancelled upon payment of an amount between \$100 and \$1,000 depending on the presence of aggravating and mitigating factors.

2. If the carrier can prove that the merchandise was never received or landed, the claim should be cancelled without payment.

3. If the carrier can neither prove that the merchandise was entered and duty paid nor that the merchandise was never received or landed, the claim should be cancelled upon payment of an amount equal to the duties that would have been due on the subject merchandise had it been properly entered plus an amount between \$100 and \$1,000.

4. If the merchandise which has been delivered directly to the consignee is free of duty, cancel the claim upon payment of an amount between \$100 and \$1,000 depending on the presence of aggravating and mitigating factors.

5. If the bonded carrier consistently delivers bonded merchandise directly to the consignee, the district director may cancel any claim upon payment of a higher amount than the guidelines generally permit. The advice of Headquarters, ORR, Penalties Branch shall be sought to determine appropriate mitigation.

D. Aggravating factors include (but are not limited to):

1. Violator refuses to cooperate with Customs or acts to impede Customs action on the case.

2. Violator experienced in handling in-bond shipments of the type in question.

3. Large number of violations in relation to total number of the same type of in-bond shipments handled by the violator, i.e., a frequent violator.

E. Mitigating Factors:

1. Violator inexperienced in handling in-bond shipments of the type in question.

2. Small number of violations in relation to total number of the same type of in-bond shipments handled by the violator, i.e., violations are infrequent.

3. Violator demonstrates remedial action to prevent future violations has been taken.

4. Evidence of contributory Customs error.

5. Circumstances intervened that were beyond carrier's control (untimely delivery cases only):

a. Act of God (related to weather or some other natural cause).

- b. An act of war or terrorism.
- c. NOTE: Human failure by the carrier or any agent of the carrier shall not be considered as a circumstance beyond the carrier's control.

IV. GUIDELINES FOR CANCELLATION OF CLAIMS INVOLVING FAILURE TO REDELIVER MERCHANTISE INTO CUSTOMS CUSTODY OR FAILURE TO COMPLY WITH A NOTICE OF REFUSAL OF ADMISSION ISSUED BY ANOTHER GOVERNMENT AGENCY (19 CFR 141.113 OR 113.62(e))

- A. Statutes and regulations enforced on behalf of FDA and CPSC:
 - 1. The provisions of 21 CFR 1.97 (FDA Regulations) and 16 CFR 1500.271 (CPSC Regulations) require that the District Director of Customs and the other applicable agency be in agreement as to the amount to be accepted in cancellation of the claim for liquidated damages. Accordingly, by regulation Customs must follow the recommendation of other agency.
 - 2. EXCEPTION: When the sole requirement which has been imposed by the Food and Drug Administration is exportation or destruction under Customs supervision, apply guidelines to be used in the case of other Customs statutes or regulations (subparagraph I of these guidelines). See 21 CFR 1.97 and HQ Ruling 617367.
 - 3. If there is sufficient reason to depart from the recommendation of the other agency, state such reason in a referral memorandum and forward the case to Headquarters, Penalties Branch.
 - 4. Note: Pursuant to T.D. 82-20, Customs must follow the Department of Commerce recommendation in redelivery cases involving failure to obtain export certificates for EC steel.
- B. Statutes and regulations enforced on behalf of other agencies (not FDA or CPSC):
 - 1. As a rule, follow recommendation of other agency.
 - 2. Customs is not required by regulation to follow the recommendation of agencies other than FDA and CPSC. If the District Director finds the recommendation of the other agency to be arbitrary and capricious, he may modify the recommendation to be consistent with Customs guidelines.
 - 3. Marking cases—Merchandise marked with the country of origin after liquidation of the entry and outside the 30-day marking period:
 - 1. If merchandise is marked outside the 30-day marking period and after liquidation of the entry, marking duties should be assessed and collected.
 - 2. If marking duties have been assessed and collected, cancel the claim upon payment of one percent of the value, but not less than \$100.
 - 3. The above mitigation should be afforded to first-time violators.
 - 4. Grant no relief in any case until marking duties are assessed and collected; however if liquidation is final and marking duties cannot be assessed, cancel upon payment of an amount between 10

and 15 percent for a first violation and 15 and 35 percent for a subsequent violation.

5. For subsequent violations where marking duties are assessed and collected, cancel upon payment of between 5 and 25 percent of the value depending upon the number of violations and the presence of aggravating and mitigating factors.

D. Marking cases—Merchandise marked outside the 30-day period but before liquidation:

1. If merchandise is properly marked with the country of origin outside the 30-day period but before liquidation of the entry, liquidated damages are appropriate, but marking duties are *not* due.

2. For a first-time violation, if the merchandise has been marked under Customs supervision outside the 30-day period, cancel upon payment of 1 percent of the value, but not less than \$100.

3. For subsequent violations, cancel upon payment of between 5 and 25 percent of the value depending upon the number of violations and the presence of aggravating and mitigating factors.

E. Marking cases—Merchandise not marked:

1. Relief from liquidated damages incurred is contingent upon deposit of marking duties. See 19 CFR 134.54(c).

2. If it is a first-time violation and marking duties have been assessed and collected, cancel the claim upon payment of between 10 and 25 percent of the value depending on the presence of aggravating or mitigating factors.

3. If it is a subsequent violation and marking duties have been assessed and collected, cancel upon payment of an amount between 25 and 50 percent of the value of the merchandise.

4. If marking duties have been assessed but not collected, grant no relief. If liquidation is final, thereby barring their assessment, cancel upon payment of no less than 50 percent of value.

5. Examples of aggravating factors:

a. Offender is uncooperative, e.g., fails to provide information to Customs.

b. A large number of violations of this type by the offender in relation to the total number of transactions engaged in.

c. Offender's experience in importing.

d. Offender's willful disregard or carelessness toward responsibilities under applicable statutes or regulations.

6. Examples of mitigating factors:

a. Contributory Customs error, e.g., offender demonstrates that he acted in accordance with instructions given by Customs personnel.

b. Offender cooperates with Customs personnel in resolution of the case.

c. Offender takes immediate remedial action.

d. Offender's lack of experience in importing.

e. A small number of violations of this type by the offender in relation to the number of transactions engaged in.

F. Quota/visa merchandise:

1. If the importer fails to redeliver visa merchandise, but subsequent to assessment of the claim produces a valid visa or visa waiver, cancel the claim upon payment of between one and five percent of the value of the merchandise (but not less than \$100), depending upon the presence of aggravating or mitigating factors.

2. If no visa is ever produced, and it is a first-time violation, cancel the claim upon payment of between 20 and 30 percent of the value, depending upon the presence of aggravating or mitigating factors.

3. If no visa is ever produced, and it is a subsequent violation, cancel the claim upon payment of no less than 50 percent of the value.

4. If the importer fails to redeliver quota merchandise, and it is a first-time violation, cancel the claim upon payment of an amount between 25 and 50 percent of the value, depending on the presence of aggravating or mitigating circumstances.

5. For subsequent quota redelivery violations, cancel the claim upon payment of no less than 50 percent of the value.

6. For merchandise which is subject to both quota and visa restrictions (some textiles are so subject), follow quota guidelines in cancelling liquidated damages.

G. Copyright violative merchandise:

1. If the importer fails to redeliver the merchandise, but after assessment of liquidated damages receives a retroactive licensing of the merchandise by the copyright holder, cancel the claim upon payment of between one and five percent of the value of the merchandise, but not less than \$100.

2. If no authorization is received from the copyright holder, cancel a first-time violation upon payment of between 20 and 50 percent of the value, depending upon the presence of aggravating or mitigating factors.

3. For subsequent violations without authorization of the copyright holder, cancel upon payment of an amount equal to no less than 50 percent of the value. In order to receive any relief, extraordinary mitigating factors must be shown.

H. Trademark violative merchandise:

1. If the importer fails to redeliver the merchandise, but after assessment of liquidated damages receives a retroactive licensing of the merchandise by the trademark holder, cancel the claim upon payment of between one and five percent of the value of the merchandise, but no less than \$100.

2. If no authorization is received from the trademark holder, cancel a first-time violation upon payment of between 25 and 50 percent of the value, depending upon the presence of aggravating or mitigating factors.

3. For subsequent violations without authorization of the trademark holder, cancel upon payment of an amount equal to no less than 50 percent of the value.

4. As a general rule, if the merchandise is counterfeit, no relief shall be granted. If the merchandise is genuine, that fact shall be considered a mitigating factor in accordance with the above guidelines.

I. Other Customs statutes and regulations:

1. For a first time violation, cancel the claim upon payment of between one and five percent of the value of the merchandise, depending on the presence of aggravating or mitigating factors.

2. For subsequent violations, cancel the claim upon payment of between 10 and 20 percent of the value of the merchandise, depending on the presence of aggravating or mitigating factors.

3. If the issue is Customs supervision of exportation or destruction of merchandise which is the subject of a notice of refusal of admission issued by FDA or CPSC and such exportation or destruction occurs, but not under supervision, cancel in accordance with subparagraph H.1.

4. If exportation or destruction never occurs, grant no relief.

V. GUIDELINES FOR CANCELLATION OF CLAIMS ARISING FROM FAILURE TO PROVIDE MISSING DOCUMENTS (19 CFR 113.42)

A. The regulatory provisions which permit cancellation of the bond upon payment of \$25 are discretionary. In lieu of following such provision, the following guidelines should be used.

B. Issuance of modified CF 5955A. A modified CF-5955A similar to that issued in cases involving late filing of entry summaries shall be issued in missing document cases.

C. *Option 1:*

1. Petitioner may pay a specified sum within 60 days and the case will be closed.

2. Such payment shall act as a waiver of his right to file a petition.

D. *Option 2:*

1. Normal petitioning procedures are in effect.

2. Mitigation shall not be permitted to an amount lower than that afforded under Option 1 unless extraordinary mitigating factors can be shown.

3. Petitions shall be limited to the following issues:

- a. Circumstances causing the delay in filing of the document,
- b. Extent of the lateness,
- c. Past record of the importer,
- d. Lack of intent to file documents untimely.

E. When a claim for liquidated damages is issued and the missing documents have not been provided (as opposed to being provided untimely), a modified 5955A should not be issued.

F. Calculation of mitigated amount:

1. Document other than invoice filed late—cancel upon payment of \$100.
2. Invoice filed late:
 - a. No resulting duty advance—cancel upon payment of \$100.
 - b. Resulting duty advance—cancel upon payment of \$100 plus .1 percent of amount of duty advance for each calendar day late.
3. Document not filed:
 - a. If absence of document will not affect duty due, cancel upon payment of \$200.
 - b. If absence of document impedes Customs ability to appraise merchandise, cancel upon payment of \$200 plus further duties determined to be owing after a reasonable appraisal of merchandise is made by Customs.
4. Document upon which a claim of conditionally free or reduced duty entry is based:
 - a. Filed late—Cancel upon payment of \$100 plus .1 percent per calendar day late of duty that would have been due had the entry been liquidated as fully dutiable. This mitigation is not affected by the fact that the late filed documents substantiated the conditionally free or reduced duty claim.
 - b. Non-filing:
 - i. For the first violation cancel upon payment of \$200 plus request liquidation of the entry as fully dutiable.
 - ii. For second or subsequent violation, cancel upon payment of \$400 plus liquidate the entry as fully dutiable.
 - c. If there is a continuing course of conduct by an importer where conditionally free entry is claimed, but documents supporting such claim are regularly missing from the entry and are not provided, the presumption after the fourth violation shall be one of bad faith in the filing of the entry as conditionally free. No relief from the claim should be afforded.
 - d. If the violator is a broker, a civil monetary penalty under title 19, United States Code, section 1641, may be appropriate.

G. Second or subsequent offenses:

Except as noted in section V(F)(5)(c), second or subsequent offenses will not be considered in cancellation of claims other than as relating to importer's past record in consideration of petitions for relief.

**VI. GUIDELINES FOR CANCELLATION OF CLAIMS ARISING FROM FAILURE TO
TIMELY FILE SHIPPER'S EXPORT DECLARATIONS (15 CFR 30.24)**

A. Assessment amounts:

1. \$50 per day for each of first three days late.
2. \$100 per day for each day late beyond three.

B. Mitigation guidelines:

1. First offense—cancel upon payment of 50 percent of the claim but not lower than \$100.

2. Second offense—cancel upon payment of 75 percent of the claim but not lower than \$100.
3. Third and subsequent offenses—no mitigation.
4. NOTE: All claims assessed for \$50 or \$100 (1 or 2 days late) will receive no mitigation.

VII. GUIDELINES FOR CANCELLATION OF CLAIMS ARISING FROM VIOLATIONS OF WAREHOUSE PROPRIETOR'S BOND (19 CFR PART 19)

A. "Defaults involving merchandise" includes violations involving merchandise which:

1. Cannot be located or accounted for in a bonded warehouse;
2. Has been removed from a bonded warehouse without a proper Customs permit;
3. Has been deposited, manipulated, manufactured, or destroyed in a bonded warehouse:
 - a. Without proper Customs permit;
 - b. Not in accordance with the description of the activity in the permit; or
 - c. In the case of Class 6 warehouses, not manufactured in accordance with the formula specified in section 19.13(e) of the Customs Regulations.

B. "Defaults not involving merchandise" is defined as any instance of failure, other than one involving merchandise, to comply with Customs laws and regulations. The same act shall not be regarded as both a default involving merchandise and a default not involving merchandise.

C. Defaults involving merchandise should be processed in accordance with the following:

1. If the breach resulted from a clerical error or mistake (a non-negligent inadvertent error), and liquidated damages have been assessed, the obligation may be cancelled upon payment of:

a. Ten percent of the value of any restricted merchandise involved in the default.

b. Three percent of the value of any other merchandise (i.e., not restricted or prohibited merchandise).

c. In any case where merchandise cannot be located or accounted for in the warehouse, and a withdrawal for consumption has not been filed or the merchandise has not been returned to Customs custody, an amount equal to the duties and taxes applicable to the merchandise.

2. If the breach resulted from negligence, the obligation may be cancelled (depending on the presence of aggravating or mitigating factors) upon payment of:

a. Not less than 50 percent of the value nor more than 150 percent of the value in the case of restricted merchandise.

b. Not less than 15 percent of the value nor more than 50 percent of the value of any other merchandise (i.e., not restricted or prohibited merchandise).

c. In the case of merchandise which cannot be located or accounted for in a warehouse, cancellation of the claim shall not be for less than an amount which is equal to duties and taxes accruing on the merchandise unless a withdrawal for consumption is filed or the merchandise is redelivered to Customs custody.

3. If the breach was intentional there will be no relief from liquidated damages.

4. Aggravating factors:

- a. Principal's failure or refusal to cooperate with Customs.
- b. Large number of violations compared to number of transactions handled.
- c. Experience of principal.
- d. Principal's carelessness or willful disregard toward its responsibilities.
- e. Merchandise not returned to Customs custody or duties and taxes not paid thereon.

5. Mitigating factors:

- a. Contributory error by Customs or by a party independent of the principal.
- b. Small number of violations compared to number of transactions handled.
- c. Remedial action taken by principal.
- d. Cooperation with Customs.
- e. Lack of experience of principal.
- f. Merchandise returned to Customs custody or duties and taxes paid.

D. Defaults not involving merchandise should be cancelled in accordance with the following guidelines:

1. If the breach resulted from clerical error, the claim may be cancelled upon payment of \$50 per default.
2. If the breach resulted from negligence, the claim may be cancelled upon payment of not less than \$100 or more than \$250 per default, depending on the presence of aggravating or mitigating factors.

3. If the breach was intentional, no relief shall granted.

VIII. CANCELLATION OF CLAIMS FOR LIQUIDATED DAMAGES ARISING FROM VIOLATION OF AIRPORT SECURITY REGULATIONS (19 CFR 122.14)

A. Failure to conduct a background investigation or failure to retain background investigation records:

1. No mitigation unless extraordinary mitigating circumstances exist.
2. An example of an extraordinary mitigating circumstance would be destruction of records by fire or act of God.

B. Unauthorized entry into secured area, failure to openly display or possess identification card, strip or seal or failure to surrender identification upon demand by an authorized Customs officer:

1. First violation—cancel upon payment of \$200.

2. Second violation—cancel upon payment of \$500.
 3. Third or subsequent violation—no mitigation.
 - C. Failure to return, failure to report loss or theft of identification card, strip or seal or failure to notify district director that employee no longer requires access to a secured area.
 1. First violation—cancel upon payment of \$500.
 2. Second or subsequent violation—no mitigation.
 - D. Presentation of an identification card, strip or seal by a person other than to whom it was issued:
 1. For a first violation, cancel without payment if the bond principal can show that it was unaware that its employee, agent or contractor used the card, strip or seal in an improper manner and it had given warnings about such conduct to all its employees, agents or contractors.
 2. For a subsequent violation against a bond principal who has received full cancellation of a claim as described in D.1. above, cancel upon payment of \$200.
 3. For any violation where the bond principal was aware that its employees, agents or contractors were acting in this improper manner, no relief shall be granted.
 - E. Refusal of an employee to obey any proper order of a Customs officer or any Customs order, rule or regulation:
 1. For a first violation, cancel without payment if the bond principal can show that it was unaware that its employee had acted contrary to a proper order, rule or regulation and it had given warnings about such conduct to all its employees.
 2. For a subsequent violation against a bond principal who has received full cancellation of a claim as described in E.1. above, cancel upon payment of between \$200 and \$500.
 3. For any violation where the bond principal was aware that its employees, agents or contractors were acting in this improper manner, no relief shall be granted.
 - F. The district director has discretion to permit greater mitigation than that permitted in the guidelines in cases involving a third or subsequent violation if the bond principal, after a first or second violation, takes remedial action and does not incur a violation for a period of six months.
- IX. GUIDELINES FOR CANCELLATION OF CLAIMS FOR LIQUIDATED DAMAGES FOR VIOLATION OF FOREIGN TRADE ZONE REGULATIONS (19 CFR PART 146)**
- A. "Default involving merchandise" includes merchandise which:
 1. Cannot be located or accounted for in the activated area of a foreign trade zone;
 2. Has been removed from the activated area of the zone without a proper Customs permit; or
 3. Has been admitted, manipulated, manufactured, exhibited, or destroyed in the activated area of a zone:
 - a. Without proper Customs permit; or

b. Not in accordance with the description of the activity in the Customs permit.

B. "Default not involving merchandise" means any instance of failure, other than one involving merchandise or late payment of the annual fee, to comply with the law or regulations governing foreign trade zones. A default involving one zone lot or unique identifier may not be combined with a default under another lot or unique identifier.

C. Cancellation of claims for liquidated damages involving merchandise:

1. If the breach resulted from a clerical error or mistake (a non-negligent or inadvertent error) cancel upon payment of:

a. One percent of the value of merchandise wholly in domestic status (as defined in 19 CFR 146.1(b)(10)) for which a Customs permit is required, not to exceed \$500 per claim.

b. Ten percent of the value of restricted or prohibited merchandise.

c. Three percent of the value of other merchandise (i.e., not prohibited, restricted or domestic status) per default, not to exceed \$1,000 per claim.

2. If the breach resulted from negligence, cancel upon payment of:

a. Not less than 2 percent or more than 5 percent of the value of domestic status merchandise for which requires a Customs permit, not to exceed \$1,500 per claim.

b. Not less than 40 percent nor more than 100 percent of the value of merchandise in the case of restricted merchandise.

c. Not less than 20 percent nor more than 35 percent of the value in the case of other merchandise (i.e., not prohibited, restricted or domestic status).

3. If the breach was intentional, grant no relief.

D. Cancellation of claims for liquidated damages not involving merchandise:

1. If the breach resulted from clerical error, the claim may be cancelled upon payment of \$50 per default.

2. If the breach resulted from negligence, the claim may be cancelled upon payment of not less than \$100 or more than \$250 per default, depending on the presence of aggravating or mitigating factors.

3. If the breach was intentional, no relief shall be granted.

E. Cancellation of claims for late payment of the annual fee:

1. If the late payment resulted form a clerical error or mistake, the claim may be cancelled upon payment of the amount due but not paid plus one-fourth of one percent per day for each calendar day payment is in arrears.

2. If the late payment resulted from negligence, cancel upon payment of the amount due but not paid plus the following percent of that amount for each day payment is in arrears:

- a. First seven calendar days—not less than one-third of one percent nor more than three-fourths of one percent per day.
 - b. Second seven calendar days—not less than 1 and one-third percent nor more than 1 and three-fourths percent per day.
 - c. After the fourteenth calendar day—not less than 2 and one-third nor more than 2 and three-fourths percent per day.
 3. If the late payment was intentional, no relief shall be granted.
- F. Aggravating and mitigating factors listed in the guidelines for cancellation of warehouse bond violations are applicable to foreign trade zone bond violations.

X. GUIDELINES FOR CANCELLATION OF CLAIMS ARISING FROM THE FAILURE TO HOLD MERCHANDISE AT THE PLACE OF EXAMINATION (19 CFR 113.62(f))

A. The following guidelines are applicable to first-time violations for failure to deliver merchandise to or hold merchandise at the place of examination and the merchandise involved in the violation is neither prohibited nor restricted:

1. Merchandise not delivered or held as a result of clerical error, and an entry summary is filed with estimated duties paid, cancel upon payment of between \$100 and \$500.
 2. Merchandise not delivered or held as a result of clerical error, but neither is an entry summary filed nor estimated duties paid, cancel upon payment of an amount equal to the estimated duties plus \$100 to \$500.
 3. Merchandise not delivered or held as a result of negligence, and an entry summary is filed and estimated duties are paid, cancel upon payment of an amount equal to estimated duties or \$1,000, whichever is greater.
 4. Merchandise not delivered or held as a result of negligence, but neither is an entry summary filed nor an amount equal to the estimated duties paid, cancel upon payment of an amount equal to three times the estimated duties or \$3,000, whichever is greater.
 5. Intentional violation, cancel upon payment of an amount equal to no less than 50 percent of the value of the merchandise. In no case can mitigation afforded for an intentional violation be more generous than that afforded for a negligent violation.
- B. Second or subsequent violation for merchandise that is not delivered to or held at the place of examination and the merchandise involved in the violation is neither prohibited nor restricted:
1. If the violation results as a matter of clerical error, cancel upon payment of an amount that is no less than double that taken for a first violation.
 2. If the violation results as a matter of negligence, cancel upon payment of an amount that is no less than double that taken for a first violation.
 3. Intentional violation, grant no relief.

C. Any violation involving failure to deliver merchandise to or hold merchandise at the place of examination and the merchandise involved is prohibited or restricted:

1. Clerical error—cancel upon payment of an amount equal to no less than 25 percent of the value of the merchandise or, if the duty rate is in excess of 25 percent, an amount equal to estimated duties, but not less than \$4,000.

2. Negligence—cancel upon payment of an amount equal to no less than 75 percent of the value of the merchandise, but not less than \$10,000.

3. Intentional—grant no relief.

D. Failure to keep any Customs seal or cording intact until the merchandise is examined.

1. Clerical error—cancel upon payment of \$100.

2. Negligence—cancel upon payment of \$500.

3. Intentional—grant no relief.

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